

## **REMARKS**

The Office action dated February 25, 2008 and the cited references have been carefully considered.

### **Status of the Claims**

Claims 4, 7, 9-12, 20, and 21 are pending.

Claims 4, 7, 9-12, 20, and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent 6,274,133 (hereinafter referred to as "the '133 Patent") in view of US Patent 5,928,606 (hereinafter referred to as "the '606 Patent").

Applicant respectfully traverses these rejections for the reasons set forth below.

### **Claim Rejection Under 35 U.S.C. § 103(a)**

Claims 4, 7, 9-12, 20, and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the '133 Patent in view of the '606 Patent. Applicant respectfully traverses the rejection of these claims because a combination of the '133 Patent and the '606 Patent does not teach or suggest all of the limitations of each of claims 4, 7, 9-12, 20, and 21.

Obviousness requires a suggestion of all the elements in a claim and a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Ex parte Alexander*, 86 U.S.P.Q.2d 1120, 1122 (BPAI, Nov. 30, 2007) (quoting *CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) and *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007)) (emphasis added). It is fatal to the rejection when "the Examiner has not identified all the elements of [a] claim [or] provided a reason that would prompted the skilled worker to have arranged them in the manner necessary to reach the claimed invention." *Id.*

Here, each of claims 4, 7, 9-12, 20, and 21 recites a method of using a composition that comprises one or more saccharides selected from the group consisting of glucose and

$\alpha$ -methyl gluco-pyranoside in their D or L forms in combination with one or more polyquaternium-10 cationic polysaccharides, wherein the saccharides and cationic polysaccharides are in amounts effective for solution preservation. Nowhere in the combined disclosure of the '133 Patent and the '606 Patent is found such a combination of the recited ingredients present in amounts effective for solution preservation. The examiner has ignored this element of each of the claims.

The Examiner asserted that the '133 Patent discloses saccharides as suitable wetting agents (in claim 5 of this patent) and that the '606 Patent teaches the wetting agents including saccharides such as glucose (Office action page 3, citing col. 10, lines 36-52 of the '606 Patent). First of all, the Examiner's latter assertion is not even correct. The '606 Patent, at the section cited by the Examiner, does not teach that saccharides were wetting agents. Instead, the '606 Patent teaches that saccharides were examples of tonicity agents. People of ordinary skill in the art understand that tonicity agents generally are not wetting agents.

The Applicant did not argue that the '133 Patent and the '606 Patent do not disclose wetting agents. Nor did the Applicant argue against each cited patent separately. Instead, the Applicant argued that the combination of these patents does not disclose all the elements of each of the claims. Specifically, the combination of these patents does not teach that the recited ingredients are included in a composition of the claims in amounts effective for solution preservation. The Examiner has not pointed to any part of the cited patents as proof of disclosure of such claimed limitation. Nor did the Examiner explain on the record why the teaching of separate wetting agents amounts to the teaching of the same compounds in combination with polyquaternium-10 in quantities effective as preservatives. When there is no teaching that a prior-art element would be useful in the claimed system, and a fair reading of the combined prior art disclosures teaches only the system of one of the references, the Examiner's strained consideration of these combined teachings would be a hindsight reconstruction of Applicant's claimed invention. *Ex parte van Ostrand*, BPAI, January 30, 2008.

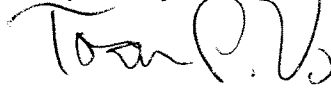
Since a combination of the cited patents does not teach or suggest the combination of a cationic polysaccharide and one or more saccharides selected from the group consisting of glucose and  $\alpha$ -methyl gluco-pyranoside in their D or L forms in amounts

effective for solution preservation, as recited in each of claims 4, 7, 9-12, 20, and 21, pointing out that the cited prior art also discloses disparately other ingredients recited in dependent claims still does not cure the deficiency of the 103(a) rejection.

Since the Examiner has not provided well-articulated and convincing reasoning for the alleged disclosure of all of the elements of each of the claims, claims 4, 7, 9-12, 20, and 21 are not rendered obvious by the '133 Patent in view of the '606 Patent.

In view of the above, it is submitted that the claims are patentable and in condition for allowance. Reconsideration of the rejection is requested. Allowance of the claims at an early date is solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Toan P. Vo', written over a horizontal line.

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